

**Final Order Denying Refund: 03-20200388**  
**Withholding Tax**  
**For the Tax Year 2018**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

**HOLDING**

Business was not entitled to a refund of collection fees because it did not establish that either it or its representative timely responded to Department's proposed assessment and demand notices.

**ISSUE**

**I. Tax Administration - Collection Fees.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *P/S, Inc. v. Indiana Dept. of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006); *Ennis v. Department of Local Government Finance*, 835 N.E.2d 1119 (Ind. Tax Ct. 2005).

Taxpayer protests the denial of a claim for refund.

**STATEMENT OF FACTS**

Taxpayer was a business with one employee located in Indiana. In 2016, per Taxpayer, the Indiana employee was placed on disability and was no longer being paid.

The Indiana Department of Revenue ("Department") issued a notice of proposed assessment in March 2019 related to withholding taxes for 2018. In April 2019, Taxpayer contacted the Department and stated there were no withholding taxes owed for 2018. The Department responded on June 4, 2019, and informed Taxpayer that it needed to file a return or Form BC-100, an Indiana Business Tax Closure Request. A second letter containing the same information was sent to Taxpayer on July 18, 2019.

Taxpayer did not respond to either the June or July 2019 letters. In October 2019, a demand notice was issued, which later advanced to the warrant stage. In early December 2019, the matter was referred to the Department's collection agency. The collection agency proceeded to collect approximately \$7,400.00.

Taxpayer contacted the Department in March 2020 regarding the collection of withholding taxes based on the "best information available" and related collection fees. On March 17, 2020, Taxpayer filed Form BC-100, officially closing the business.

Taxpayer received a full refund of all collected tax. Approximately \$1,200.00 was paid in collection fees and was not refunded. Taxpayer protested the partial refund denial and submitted a protest to that effect. An administrative phone hearing was held during which Taxpayer explained the basis for its protest. This Final Order Denying Refund results. Further facts will be provided as necessary.

**I. Tax Administration - Collection Fees.**

**DISCUSSION**

Taxpayer protests the Department's partial denial and maintains that, since the sole Indiana employee was not paid and no withholding taxes were due, it should not be required to pay collection fees for monies which were never owed. The Department reviewed Taxpayer's circumstances and agreed to refund the withholding tax portion of the amount collected by the collection agency. The remaining issue is whether Taxpayer should be refunded the collection fees.

As a threshold issue, a Taxpayer is required to provide documentation explaining and supporting his or her

challenge that the Department's position is wrong. "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Under IC § 6-8.1-5-1(b), if the Department reasonably believes a person has not reported the proper amount of tax due, the Department shall propose an assessment based on the best information available. The proposed assessment is considered a tax payment, and if payment is not made by the due date, it is subject to penalties and interest. *Id.* Notice is provided to a Taxpayer via written letter sent via the U.S. Postal Service, which allows sixty days for Taxpayer to either pay the assessment or file a protest. IC § 6-8.1-5-1(b) and (d). If the assessment remains unpaid during the sixty-day period, the Department shall demand payment as provided in IC § 6-8.1-8-2. If the proposed amount remains unpaid, a collection fee of ten percent is added to the total amount due. IC § 6-8.1-8-2(b). The Department may employ a collection agency for the collection of delinquent tax plus interest, penalties, collections fees, sheriff's costs, clerk's costs, and other reasonable fees. IC § 6-8.1-8-4(a) and (b).

In this case, Taxpayer argues that it should not owe collection fees on taxes which were not actually due. When the Department issued the Notice of Proposed Assessment, the letter was sent to Taxpayer's address in Chicago. In response, Taxpayer contacted the Department approximately three weeks later asking the Department to "cancel the assessment." The Department placed a hold on Taxpayer's account and followed up with two letters - 44 days apart - informing Taxpayer that it needed to either file a return or a Form BC-100. Both letters were sent to the same Chicago address where the Notice of Proposed Assessment was mailed. Finally, the demand notice regarding payment was sent to this same address. None of the letters were returned to the Department as undeliverable. There is no indication that Taxpayer timely responded to the follow-up letters or the demand notice.

When an administrative agency sends notice through the regular course of mail, a presumption exists that such notices are received. *P/S, Inc. v. Indiana Dept. of State Revenue*, 853 N.E.2d 1051, 1054 (Ind. Tax Ct. 2006). The presumption is rebuttable; however, if a taxpayer states only that the notices were not received, the presumption has not been rebutted. *Id; Ennis v. Department of Local Government Finance*, 835 N.E.2d 1119 (Ind. Tax Ct. 2005).

The Department does not agree with Taxpayer's position. In this case, the Department mailed multiple notices to the same address where the Notice of Proposed Assessment was sent. Taxpayer timely responded to the proposed assessment but failed to file a return or Form BC-100 as requested by the Department in two different letters in June and July of 2019. The Department followed statutory procedure for each step. No one contacted the Department until after the collection fees were incurred. The Department does not retain collection fees. Rather, the collection fees arose wholly due to Taxpayer's failure to respond timely to the Department's notices. When Taxpayer contacted the Department and filed Form BC-100, the Department issued an appropriate refund of base tax paid. In the absence of Department error, the Department does not agree that it should bear the cost of the properly executed statutory collection procedures.

## FINDING

Taxpayer's protest is denied.

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